

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 12/20/2012

Action Requested By:
Engineering

Agenda Item Type
Resolution

Subject Matter:

Easement Agreement with The Secretary of the Army

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into an Easement Agreement with The Secretary of the Army for the 40.32 acres of land on Redstone Arsenal for Zierdt Road Improvements, Project No. STHV-8507(600) & COH Project No. 65-06-RD01

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

This agreement is for an easement along the east side of Zierdt Road and is necessary for the construction of Zierdt Road to a four lane roadway including roadway, drainage, utilities and relocated fences, starting generally 1,000 feet south of Martin Road and ending at I-565's southern right-of-way. No funds involved.

Associated Cost:

Budgeted Item: Select...

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: Kathy Martin

Date:

revised 3/12/2012

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: **Engineering**

Council Meeting Date: **12/20/2012**

Department Contact: **Lynn Majors**

Phone # **256-427-5201**

Contract or Agreement: **License Agreement**

Document Name: **Zierdt Road Easement Agreement, Project No. 65-01-RD01 &
STPHV-8507 (600)**

City Obligation Amount: **0**

Total Project Budget: **0**

Uncommitted Account Balance: **0**

Account Number: **N/A**

Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
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Grant-Funded Agreements

<u>Not Applicable</u>	Grant Name:
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Department	Signature	Date
1) Originating	<i>Kathy Martin</i>	<i>12/12/12</i>
2) Legal	<i>Mary Carter</i>	<i>12/12/12</i>
3) Finance	<i>RC</i>	<i>12/13/12</i>
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 12-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized to enter into a License Agreement by and between the City of Huntsville and The Secretary of the Army, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said License Agreement is substantially in words and figures as that certain document attached hereto and identified as "Easement Agreement between the City of Huntsville and The Secretary of the Army for an easement of 40.32 acres of land for Zierdt Road Widening, PH I, Project No. STPHV-8507(600) & COH Project No. 65-06-RD01" consisting of seven (7) pages plus three (3) pages consisting of Exhibit "A", and the date of December 20, 2012, appearing on the margin of the first page, together with the signature of the President of the City Council, and an executed copy of said document after being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 20th day of December, 2012.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 20th day of December, 2012.

Mayor of the City of Huntsville,
Alabama

NO. DACA01-2-13-1201
DEPARTMENT OF THE ARMY
EASEMENT FOR PUBLIC ROAD
LOCATED ON REDSTONE ARSENAL
MADISON COUNTY, ALABAMA

THE SECRETARY OF THE ARMY under and by virtue of the authority vested in the Secretary by Title 10 United States Code Section 2668, having found that the granting of this easement will not be against the public interest, hereby grants to CITY OF HUNTSVILLE, hereinafter referred to as the Grantee, whose address is Post Office Box 308, Huntsville, Alabama 35804, an easement for 40.32 acres of land for the Zierdt Road expansion, hereinafter referred to as the Facilities, over, across, in and upon the lands of the United States as identified by Legal Description in Exhibit A and by Map in Exhibit B, attached hereto and made a part hereof, hereinafter referred to as the Premises.

THIS EASEMENT is granted subject to the following conditions:

1. TERM

This easement is granted for a term of fifty (50) years, beginning 1 January 2013 and ending 31 December 2062, but is revocable at will by the Secretary.

2. CONSIDERATION

The consideration for this easement shall be the construction, operation, and maintenance of a public road for the benefit of the United States and the general public in accordance with the terms herein set forth.

3. NOTICES

All correspondence and notices to be given pursuant to this easement shall be addressed, if to the Grantee, to Director of City Engineering, City of Huntsville, Post Office Box 308, Huntsville, Alabama 35804-0308, and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, 109 Saint Joseph Street, Mobile, Alabama 36602, or as may from time to time otherwise be directed by the Parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary", "District Engineer", "Installation Commander", or "said officer" shall include their duly authorized representatives. Any reference to "Grantee" shall include assignees, transferees, and their duly authorized representatives.

5. SUPERVISION BY THE INSTALLATION COMMANDER

The construction, operation, maintenance, repair, or replacement of said Facilities, including culverts and other drainage Facilities, shall be performed at no cost or expense to the United

President of the City Council of the City
of Huntsville, AL
Date: December 20, 2012

States and subject to the approval of the Installation Commander, Redstone Arsenal, hereinafter referred to as said officer. Upon the completion of any of the above activities, the Grantee shall immediately restore the Premises to the satisfaction of said officer. The use and occupation of the Premises for the purposes herein granted shall be subject to such rules and regulations as said officer prescribes in writing from time to time.

6. APPLICABLE LAWS AND REGULATIONS

The Grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the Premises are located.

7. CONDITION OF PREMISES

The Grantee acknowledges that it has inspected the Premises, knows the condition, and understands that the same is granted without any representation or warranties whatsoever and without any obligation on the part of the United States.

8. INSPECTION AND REPAIRS

The Grantee shall inspect the Facilities at reasonable intervals and immediately repair any defects found by such inspection or when required by said officer to repair any such defects.

9. PROTECTION OF GOVERNMENT PROPERTY

The Grantee shall be responsible for any damage that may be caused to property of the United States by the activities of the Grantee under this easement, and shall exercise due diligence in the protection of all property located on the Premises against fire or damage from any and all causes. Any property of the United States damaged or destroyed by the Grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Grantee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the Grantee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

10. RIGHT TO ENTER

The right is reserved to the United States, its officers, agents, and employees to enter upon the Premises at any time and for any purpose necessary or convenient in connection with government purposes, to make inspections, to remove timber or other material, except property of the Grantee, to flood the Premises and/or to make any other use of the lands as may be necessary in connection with government purposes, and the Grantee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

11. RIGHT TO CONNECT

The United States reserves the right to make such connections between the road or street herein authorized and roads and streets on other government lands as said officer may from time consider necessary, and also reserves to itself rights-of-way for all purposes across, over or under the right-of-way hereby granted; provided that such rights shall be used in a manner that will not create unnecessary interference with the use and enjoyment by the Grantee of the right-of-way herein granted.

12. OTHER AGENCY AGREEMENTS

It is understood that the provisions of the conditions on SUPERVISION BY THE INSTALLATION COMMANDER and RIGHT TO ENTER above shall not abrogate or interfere with any agreements or commitments made or entered into between the Grantee and any other agency of the United States with regard to financial aid to the Grantee in connection with the construction, maintenance, or repair of the Facilities herein authorized.

13. TERMINATION

This easement may be terminated by the Secretary upon thirty (30) days written notice to the Grantee if the Secretary shall determine that the right-of-way hereby granted interferes with the use or disposal of said land by the United States, or it may be revoked by the Secretary for failure of the Grantee to comply with any or all of the conditions of this easement, or for non-use for a period of two (2) years, or for abandonment.

14. SOIL AND WATER CONSERVATION

The Grantee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said Premises at the beginning of or that may be constructed by the Grantee during the term of this easement, and the Grantee shall take appropriate measures to prevent or control soil erosion within the right-of-way herein granted. Any soil erosion occurring outside the Premises resulting from the activities of the Grantee shall be corrected by the Grantee as directed by said officer.

15. ENVIRONMENTAL PROTECTION

- a. Within the limits of their respective legal powers, the parties hereto shall protect the Premises against pollution of its air, ground and water. The Grantee shall comply with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the Premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this easement. The Grantee shall not discharge waste or effluent from the Premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.
- b. The use of any pesticides or herbicides within the Premises shall be in conformance with all applicable Federal, state, interstate, and local laws and regulations. The Grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the Premises.
- c. The Grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the Grantee's activities, the Grantee shall be liable to restore the damaged resources.

16. HISTORIC PRESERVATION

The Grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the Premises, the Grantee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

17. REMEDIAL ACTION.

The Redstone Arsenal (RSA) Garrison Installation Restoration Program, in conjunction with the Environmental Protection Agency and the Alabama Department of Environmental Management, has implemented enforceable land use controls for the use of Installation-wide Groundwater. RSA's Installation-wide Groundwater Interim Record of Decision prohibits the use of groundwater for drinking water purposes. Any intrusive activities that may expose works to groundwater (including seeps and springs) must be reviewed by the Installation Restoration Branch in the Department of Public Works (DPW) through the DPW Job Order request procedures. Installation of wells is not permitted without the review and approval from the RSA Garrison Installation Restoration Branch.

18. NON-DISCRIMINATION

- a. The Grantee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national, origin or religion.
- b. The Grantee, by acceptance of this easement, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964 as amended (42 USC § 2000d); the Age Discrimination Act of 1975 (42 USC § 6102); the Rehabilitation Act of 1973, as amended (29 USC § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directive 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Grantee, its agents, successors, transferees, and assignees.

19. RESTORATION

On or before the termination or revocation of this easement, the Grantee shall, without expense to the United States and within such time as said officer may indicate, restore the Premises to the satisfaction of said officer. In the event the Grantee shall fail to restore the Premises, at the option of said officer, said improvements shall either become the property of the United States without compensation therefore, or said officer shall have the option to perform the restoration at the expense of the Grantee, and the Grantee shall have no claim for damages against the United States or its officers or agents for such action.

20. DISCLAIMER

This instrument is effective only insofar as the rights of the United States in the Premises are concerned; and the Grantee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this easement does not eliminate the necessity for obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33

USC § 403), Section 404 of the Clean Water Act (33 USC § 1344) or any other permit or license which may be required by Federal, state, interstate or local laws in connection with the use of the Premises.

THIS EASEMENT is not subject to Title 10 United States Code Section 2662, as amended.

IN WITNESS WHEREOF I have hereunto set my hand by the authority and direction of the Secretary of the Army this _____ day of _____ 20____.

Willie L. Patterson III Ed.D.
District Chief Real Estate
Real Estate Contracting Officer
US Army Engineer District, Mobile

ACKNOWLEDGMENT

STATE OF ALABAMA
COUNTY OF MOBILE

On this _____ day of _____, 20____, before me the undersigned Notary Public, personally appeared _____, known to me to be the person described in the foregoing instrument, who acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

My Commission Expires:

THIS EASEMENT is also executed by the Grantee in witness whereof this _____ day of _____ 20____.

Tommy Battle
Mayor
City of Huntsville

ACKNOWLEDGMENT

STATE OF ALABAMA
COUNTY OF MADISON

On this _____ day of _____, 20____, before me the undersigned Notary Public, personally appeared _____, known to me to be the person described in the foregoing instrument, who acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

My Commission Expires:

Exhibit A

STATE OF ALABAMA
MADISON COUNTY

Surveyors Description

Reference Drawing #1 - Redstone Arsenal

A tract or parcel of land lying and being in Sections 14, 23, 26 & 35, Township 4 South, Range 2 West of the Huntsville Meridian, Madison County, Alabama, and being more particularly described as follows:

Commencing at a concrete monument stamped "U.S. 48" found at the Southwest corner of Section 35, Township 4 South, Range 2 West of the Huntsville Meridian; Thence North 01 Degrees 14 Minutes 06 Seconds East, along the West line of said Section 35, 1041.92 feet to a #5 rebar with a cap stamped "GARVER ENG. CA#445" set, said point being the Point of Beginning having established coordinates of Northing 1508566.64, Easting, 390211.15 of zone east of the Alabama State Plane Coordinate System.

Thence from the Point of Beginning North 01 Degrees 14 Minutes 05 Seconds East, along said West line, a distance of 1618.45 feet; Thence North 01 Degrees 14 Minutes 14 Seconds East, along said West line, a distance of 2646.18 feet to a cotton spindle found at the Northwest corner of said Section 35; Thence North 02 Degrees 16 Minutes 52 Seconds East, along the West line of Section 26, Township 4 South, Range 2 West a distance of 2669.50 feet; Thence North 02 Degrees 17 Minutes 33 Seconds East, along said West line, a distance of 2651.02 feet to a nail found at the Northwest corner of said Section 26; Thence North 02 Degrees 16 Minutes 48 Seconds East, along the West line of Section 23, Township 4 South, Range 2 West, a distance of 2059.42 feet to a #4 rebar a with cap stamped "MARTIN 13191"; Thence North 02 Degrees 14 Minutes 39 Seconds East, along said West line, a distance of 95.09 feet to a #4 rebar a with cap stamped "MARTIN 13191"; Thence North 02 Degrees 18 Minutes 17 Seconds East, along said West line, a distance of 344.16 feet to a #4 rebar with a cap stamped "CIVIL SOLUTIONS"; Thence North 02 Degrees 16 Minutes 01 Seconds East, along said West line, a distance of 67.96 feet to a #4 rebar with a cap stamped "CIVIL SOLUTIONS"; Thence North 02 Degrees 15 Minutes 54 Seconds East, along said West line, a distance of 2786.14 feet to a Railroad Spike found at the Northwest corner of said Section 23; Thence North 02 Degrees 00 Minutes 48 Seconds East, along the West line of Section 14, Township 4 South, Range 2 West, a distance of 1783.89 feet; Thence North 61 Degrees 04 Minutes 41 Seconds East, leaving said West line, a distance of 45.45 feet to a concrete monument found at the intersection of the East Right-of-Way of Zierdt Road with the South Right-of-Way of Interstate 565; Thence North 60 Degrees 08 Minutes 53 Seconds East, along said South Right-of-Way of Interstate, a distance of 64.74 feet to a #5 rebar with a cap stamped "GARVER ENG. CA#445" set at the intersection of said South Right-of-Way and the proposed East Right-of-Way Easement of Zierdt Road; Thence South 01 Degrees 59 Minutes 02 Seconds West, along said proposed Right-of-Way Easement and leaving said South Right-of-Way, a distance of 1842.29 feet to a #5 rebar with a cap stamped "GARVER ENG. CA#445" set; Thence South 02 Degrees 14 Minutes 00 Seconds West, a distance of 1926.84 feet to a #5 rebar with a cap stamped "GARVER ENG. CA#445" set; Thence South 07 Degrees 32 Minutes 03 Seconds East, a distance of 864.21 feet to a #5 rebar with a cap stamped

Exhibit A

"GARVER ENG. CA#445" set; Thence South 02 Degrees 17 Minutes 49 Seconds West, a distance of 209.46 feet to a #5 rebar with a cap stamped "GARVER ENG. CA#445" set; Thence South 12 Degrees 07 Minutes 41 Seconds West, a distance of 864.19 feet to a #5 rebar with a cap stamped "GARVER ENG. CA#445" set; Thence South 02 Degrees 17 Minutes 49 Seconds West, a distance of 1510.09 feet to a #5 rebar with a cap stamped "GARVER ENG. CA#445" set; Thence South 02 Degrees 17 Minutes 19 Seconds West, a distance of 2653.99 feet to a #5 rebar with a cap stamped "GARVER ENG. CA#445" set; Thence South 02 Degrees 17 Minutes 18 Seconds West, a distance of 2653.43 feet to a #5 rebar with a cap stamped "GARVER ENG. CA#445" set; Thence South 01 Degrees 14 Minutes 10 Seconds West, a distance of 2660.50 feet to a #5 rebar with a cap stamped "GARVER ENG. CA#445" set; Thence South 01 Degrees 13 Minutes 12 Seconds West, along said proposed East Right-of-Way, a distance of 525.35 feet to a #5 rebar with a cap stamped "GARVER ENG. CA#445" set; Thence South 42 Degrees 12 Minutes 39 Seconds East, a distance of 72.40 feet to a #5 rebar with a cap stamped "GARVER ENG. CA#445" set; Thence South 01 Degrees 14 Minutes 09 Seconds West, a distance of 115.57 feet to a #5 rebar with a cap stamped "GARVER ENG. CA#445" set; Thence South 47 Degrees 47 Minutes 22 Seconds West, a distance of 68.77 feet to a #5 rebar with a cap stamped "GARVER ENG. CA#445" set; Thence South 01 Degrees 14 Minutes 09 Seconds West, a distance of 877.69 feet to a #5 rebar with a cap stamped "GARVER ENG. CA#445" set; Thence North 88 Degrees 45 Minutes 51 Seconds West, a distance of 94.96 feet to the Point of Beginning.

The above described tract or parcel contains 40.32 acres more or less.

